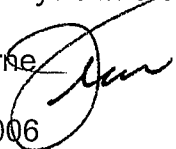




OFFICE OF  
INSURANCE COMMISSIONER

# MEMORANDUM

TO: Market Analysis Interested Parties

FROM: Jim Odiorne 

DATE: May 3, 2006

RE: Response to comments on Sections 13-17 of Z Draft

The Office of the Insurance Commissioner (OIC) is a state regulatory agency whose mission is to protect consumers, the public interest, and our state's economy through fair and efficient regulation of the insurance industry.

Thank you once again to all who provided comments. The comments, as they were received, are attached for your review. We are reviewing the comments internally and with the assistance of verbal comments next week, some comments are likely to be included in a revised draft.

Judging from these comments, our scheduled meeting could be rather short. It might be appropriate to consider revised language that was promised by interested parties relating to sections previously reviewed. If you want to take up proposed revisions to previously reviewed sections, please provide copies to me and all interested parties prior to our next meeting.

I look forward to our face-to-face discussion at 1:30 pm on May 10, 2006. If you plan to participate by conference call, please notify Brenda Davis at [BrendaD@oic.wa.gov](mailto:BrendaD@oic.wa.gov) by noon on Tuesday, May 9.



**Jim Odiorne**

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**From:** AWHP [AWHP@comcast.net]  
**Sent:** Wednesday, May 03, 2006 11:02 AM  
**To:** Jim Odiorne  
**Cc:** Beth Berendt  
**Subject:** Mkt Analysis Z-Draft Sections 13-17 Comments



Jim

Thank you for the opportunity to provide AWHP's comments (attached) regarding Sections 13, 14, 15, 16 & 17 of the OIC's Market Analysis Z-Draft bill.

Please don't hesitate to give me a call (425-396-5375) if I can answer any questions, or if you would like to discuss.

Sydney

Association of Washington Healthcare Plans  
Sydney Smith Zvara, Executive Director  
7252 Fairway Ave SE  
Snoqualmie, WA 98065  
425-396-5375 Tel  
425-396-5372 Fax  
AWHP@comcast.net

5/3/2006



The Association of Washington Healthcare Plans

May 3, 2006

Sent via E-Mail & U.S. Postal Service

Jim Odiorne  
Deputy Insurance Commissioner  
Washington State Office of Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Re: Market Analysis Z-Draft (April 6<sup>th</sup> Version)  
Sections 13, 14, 15, 16 & 17

Dear Jim,

On behalf of AWHP's member healthcare plans, we appreciate the opportunity to comment on the Office of Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for Market Regulation and Surveillance. Again, we would like to convey our appreciation for OIC incorporation of a number of insurer suggestions into the most recent Z-Draft revision.

We would also like to note, however, that the overall reservations we have previously expressed regarding the need for and scope of the legislative proposal continue to apply. We also continue to be concerned that the proposed draft will not replace existing market conduct examinations but rather will overlay the current structure with yet another process for examining carriers' market practices.

In accordance with the OIC's Market Analysis Project schedule, we offer the following additional comments and suggestions regarding sections 13, 14, 15, 16 & 17 of the proposed draft, for your consideration.

**Section 13 – Coordination with Other State Insurance Regulators through the NAIC**

We suggest replacing Subsection (1) with the language used in both the NAIC and industry models (it is the same for both). We would also like to gain insight into why OIC chose to deviate from the already accepted language.

As suggested in AHIP's letter, we encourage amending the discretionary standard provided under Subsection (2) from a "may" to a "shall", so as to provide greater clarity regarding expectations among all parties.

**Section 14 – Additional Duties of the Commissioner**

In recognition that information related to potential statutory or regulatory violations could arise from a wide variety of sources, we agree with AHIP's recommendation that the reference to employees and employers be removed.

### **Section 15 – Study and Report**

We appreciate OIC including this section in the Z-Draft. It recognizes the need to repeal certain provisions of current law that overlap or conflict with the proposed bill. At the same time, we suggest the timeframe be reduced from six years to within one-to-two years after enactment of the law. We also suggest that some of the more obvious overlaps and conflicts with existing law be addressed now within the Z-Draft, rather than waiting. The cross-walk document provided by AHIP identifies sections where there are overlaps, and could serve as a good starting point for this effort.

### **Section 16 – Effective Date**

It is likely that any Market Analysis legislation would not be passed until April or May of 2007, thus an effective date of July 1<sup>st</sup> 2007 would not allow sufficient time for any rule-making --- such as that mentioned in the OIC's April 19<sup>th</sup> memo on Sections 10, 11 and 12. Accordingly, we recommend changing the effective date to no earlier than January 1, 2008.

Again, we appreciate the opportunity to provide our comments and suggestion, and hope they will be of assistance.

Sincerely,

Sydney Smith Zvara  
Executive Director

**Jim Odiorne**

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**From:** Jones, Christian [C.Jones@ahip.org]  
**Sent:** Wednesday, May 03, 2006 2:02 PM  
**To:** Jim Odiorne  
**Cc:** Sorensen, Melvin  
**Subject:** AHIP Comment Letter on Sections 13, 14, 15, 16 and 17 of 4/6 Z draft

Deputy Commissioner Odiorne-

Please accept the attached written comments on behalf of America's Health Insurance Plans (AHIP) regarding sections 13, 14, 15, 16 and 17 of the Office of the Insurance Commissioner's revised z-draft on market conduct.

I apologize that you are not receiving this document before your deadline and respectfully request AHIP's comments still enter into your record.

Feel free to contact me with any questions.

Thank you.

Christian

Christian Jones  
America's Health Insurance Plans  
601 Pennsylvania Avenue, NW  
Washington, DC 20004  
202-778-1153  
[www.ahip.org](http://www.ahip.org)

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5/3/2006

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Insurance Plans**

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May 3, 2006

Deputy Commissioner James Odiorne  
Washington State Office of the Insurance Commissioner  
5000 Capitol Way  
Tumwater, Washington 98501

Re: Market Conduct Surveillance Model Act  
Sections 13, 14, 15, 16 and 17 of 4/6 Z draft

Dear Deputy Commissioner Odiorne:

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity to comment on the Office of the Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for a Market Conduct Surveillance Model Act. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate the OIC's efforts to adopt language that incorporates the uniform standards developed by the National Association of Insurance Commissioners (NAIC) and the National Council of Insurance Legislators (NCOIL) with respect to state market analysis and market conduct programs. Please accept this correspondence in response to your request for comments on sections 13, 14, 15, 16 and 17 of the OIC's 4/6 Z draft. Our suggested deletions are highlighted with ~~striketrough text~~ and our requested additions are highlighted in underlined text. As you will note from our below comments, we have no suggestions or concerns regarding the provisions of sections 16 and 17. Thank you in advance for the time and consideration of these comments.

Section 13 – Coordination With Other States Insurance Regulators Through the NAIC

As discussed previously, one of the goals of the regulatory reform modernization efforts is to conserve and focus resources by increasing the efficiencies and decreasing costs associated with the regulatory process. In addition, to achieve true uniformity and consistency it is critical that discretion be limited in appropriate circumstances. We therefore would encourage amending the discretionary standard provided under this subsection 2 from a "may" to a "shall" standard to set clear expectations among all parties. We respectfully note that a broad deference standard is critical to the national regulatory reform efforts that seek to bring efficiencies to the market conduct process and to enhance collaboration and coordination among the states.

May 3, 2006

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*If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall ~~may~~, in lieu of conducting a market conduct action or examination, accept verification that the insurer made a similar modification in this state.*

#### Section 14 – Additional Duties Of The Commissioner

What follows is a suggested modification to section 14 to remove the references to employees and employers. We respectfully note that information regarding insurers and licensed entities can arise from a number of sources, not just employees of those organizations. In addition, information can be received about unauthorized entities. As such, we recommend the individual designated by the commissioner should be prepared to accept information related to potential statutory or regulatory violations from any and all sources.

*The commissioner shall designate a specific person or persons within the commissioner's office whose responsibilities shall include the receipt of information ~~from employees of insurers and licensed entities~~ concerning violations of laws, rules or regulations ~~by employers, as defined in this chapter~~. These persons shall be provided with proper training on the handling of such information. The information shall be confidential and not open to public inspection.*

#### Section 15 – Study and Report

We appreciate and understand that time is needed in order to conduct a thorough evaluation of the duplicate nature of the provisions in the draft Market Conduct Surveillance law and current statutory and regulatory requirements. However, we would recommend a shorter timeframe to complete the initial analysis and address overlapping requirements. We respectfully suggest that the commissioner's report can request additional time to study any remaining open issues that require further study.

*Not later than December 15, 2009 ~~2012~~, the commissioner will report to the legislature the results of his study of the provisions of Title 48 RCW which are duplicative of the provisions of this act or which are no longer necessary because of the provision of the act. The commissioner's report shall include a recommendation for resolving duplicative or unnecessary provisions.*

May 3, 2006  
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Thank you for the opportunity to provide comments on this matter and we look forward to continuing to work with the OIC on this legislative proposal. Please feel free to contact us with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Betsy M. Pelovitz". The signature is fluid and cursive, with the first name "Betsy" being more prominent and the last name "Pelovitz" written in a smaller, more compact script.

Betsy M. Pelovitz  
Regional Director

cc: Melvin Sorenson, Carney Badley Spellman, PS



**Jim Odiorne**

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**From:** kenton.brine@pciaa.net  
**Sent:** Wednesday, May 03, 2006 2:31 PM  
**To:** Jim Odiorne  
**Cc:** Beth Berendt; sorensen@carneylaw.com  
**Subject:** PCI comments on Secs. 13-16 OIC Revised Z Draft Market Surveillance

Jim -

Please see below PCI's comments Sections 13-16 of the OIC's draft legislation on market analysis, prepared by Don Cleasby, PCI Vice President, Regional Manager and Counsel. Please let me know if you need further information on PCI's comments.

Thank you.

Kenton Brine  
NW Regional Manager  
Property Casualty Insurers Association of America  
kenton.brine@pciaa.net  
360.481.6539  
1500 Water Street SW, Ste. 2  
Olympia, Washington 98501

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May 3, 2006

Mr. Jim Odiorne  
Deputy Commissioner, Market Conduct  
Office of the Commissioner of Insurance  
Insurance Building  
P.O. Box 40255  
Olympia, WA 98504

**Re: Draft Legislation on Market Regulation and Surveillance, Sections 13-16**

This email provides continued comments from the Property Casualty Insurers Association of America (PCI) to the Department's 4/17 Revised Z draft Market Regulation and Surveillance Model Law. As requested, these comments are limited to Sections 13 through 17 of the draft.

**SECTION 13**

**Paragraph (2) of Section 13** should require rather than allow the commissioner to accept the finding of another regulator that the insurer has modified a practice or procedure in Washington that had been uncovered in an examination or action performed by the other regulator. This will allow the Washington Department to concentrate on practices or procedures that have not been addressed by another state. We would suggest rewording this paragraph to read as follows: If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specified practice or procedure, the commissioner shall accept documentation that the insurer has made a similar modification in this state.

5/3/2006

**SECTION 14**

The PCI advocates a new paragraph in this section that requires the Commissioner, at least once per year, to notify insurers and other entities regulated by the Department of new laws, enforcement actions or other information pertinent to ensuring compliance with market conduct examinations. This will reduce future market problems and ensure that regulated entities are fully apprised of the Department's enforcement expectations. The new paragraph would read as follows: At least once per year, or more frequently if deemed necessary, the Commissioner shall provide in an appropriate manner to insurers and other entities subject to the scope of (cite Insurance Code citation) information on new laws and regulations, enforcement actions and other information the Commissioner deems pertinent to ensure compliance with market conduct requirements. The failure of the Commissioner to provide any such information shall not be a defense for any insurer that fails to comply with any insurance law of this state. The Commissioner may provide the required notice in an electronic format that is designed to give insurers and other entities adequate notice.

**SECTION 15**

No comments.

**SECTION 16**

July 1, 2007 seems like a very short time within which to come into compliance with a law that won't be enacted until the Spring of 2007. Most of the systems changes need to be made by the Department, so this should be a greater concern for them than the industry.

Don Cleasby  
Vice President, Regional Manager and Counsel  
Direct Phone: 847-553-3671  
donald.cleasby@pciaa.net

Property Casualty Insurers Association of America

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